

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application No.:	10/051,268	§	Examiner:	Pham, Christine
Filed:	January 18, 2002	§	Group/Art Unit:	2122
Inventor(s):		§	Atty. Dkt. No:	5150-58300
	Sundeeh Chanhoke, Nicolas	§		
	Vazquez, David W Fuller and	§		
	Christopher Cifra	§		
		§		
Title:	System and Method for	§		
	Programmatically	§		
	Generating a Graphical	§		
	Program Based on a	§		
	Sequence of Motion	§		
	Control, Machine Vision,	§		
	and Data Acquisition	§		
	(DAQ) Operations	§		

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**RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF**

Dear Sir or Madam:

This paper is submitted in response to the Notice of Non-Compliant Appeal Brief mailed December 21, 2006.

## **REMARKS**

Appellant is in receipt of the Notice of Non-Compliant Appeal Brief mailed December 21, 2006. The Notice states that, “The Summary of Claimed Subject Matter (Brief, pages 5-15) includes description of only claims 1, 25, 26, 28, 37, 39, 41-45. However, at least claims 5, 6, 7-13, 17, 21, 24, 31 and 36 were argued separately (Brief, pages 20-30).”

However, 37 CFR 41.37(c)(1)(v) states the following:

Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Appellant respectfully submits that the Appeal Brief filed on September 1, 2006 is in full compliance with the above rule, and the Notice of Non-Compliant Appeal Brief is in error. All of the independent claims are discussed in the Summary of Claimed Subject Matter, with reference made to the specification by page and line number, and to the drawings by reference characters.

Appellant notes that some of the dependent claims are argued separately in the Appeal Brief, but these dependent claims are not means plus function or step plus function claims, and thus should not be described in the Summary of Claimed Subject Matter. See 37 CFR 41.37(c)(1)(v) above regarding dependent claims. The only mention of dependent claims says that, “for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified...” However, since none of the dependent claims in the present application are structured as means plus function or step plus function claims, Appellant respectfully submits that

none of the dependent claims should be described in the Summary of Claimed Subject Matter.

## **CONCLUSION**

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-58300/JCH.

Respectfully submitted,

/Jeffrey C. Hood/

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